

Eurex Clearing Circular 087/18

Amendments to the FCM Regulations and FCM Default Rules of Eurex Clearing AG

Summary

On 24 August 2018, Eurex Clearing published Eurex Clearing circular 072/18, which announced Eurex Clearing's plan to launch a refined Legally Segregated Operationally Commingled (LSOC) framework as soon as final CFTC approval is received, as well as corresponding amendments, including renewed Futures Commission Merchant (FCM) Regulations exclusively for the LSOC framework and FCM Default Rules.

This circular contains further amendments to the FCM Regulations and FCM Default Rules regarding the following topics:

1. Amendment to require that FCM Clearing Members generally perform a take-up or reject any incoming client trade within ten minutes;
2. Further clarifications.

The amendments above will come into effect on **12 November 2018**.

Attachments:

- Amended sections of Chapters I and II of the FCM Regulations and amended FCM Default Rules

Date: 19 October 2018

Recipients: All FCM Clearing Members of Eurex Clearing AG

Authorized by: Heike Eckert

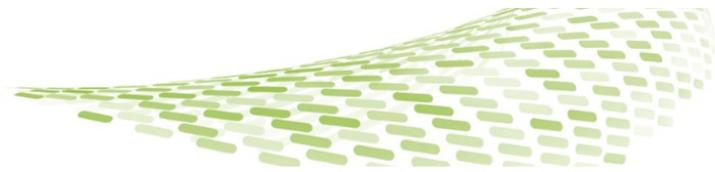
Target group:

- All departments

Related Eurex Clearing circular:
072/18

Contact:

Your Key Account Manager Clearing,
clearing.services-
admission@eurexclearing.com



Amendments to the FCM Regulations and FCM Default Rules of Eurex Clearing AG

Eurex Clearing is implementing the amendments to the FCM Regulations and FCM Default Rules on 12 November 2018.

1. Amendment to require that FCM Clearing Members generally perform a take-up or reject any incoming client trade within ten minutes

Eurex Clearing is incorporating a paragraph in the FCM Regulations regarding Eurex Clearing's straight-through-processing (STP). Specifically, the amendment provides that in case a new transaction is submitted for acceptance (i.e. no credit limit token is attached), an FCM Clearing Member must accept the swap transaction in the system of Eurex Clearing no later than ten minutes after receipt of the transaction for acceptance. In addition, the amendment provides that Eurex Clearing will inform an FCM Clearing Member of a breach of this period, and, if the FCM Clearing Member does not demonstrate to Eurex Clearing within a reasonable timeframe the reasons for the breach of the period, Eurex Clearing will reject the transaction.

To reflect the changes, the following provision of the FCM Regulations will be amended as outlined in the attachment:

- FCM Regulations Chapter II Part 1 Section 1.2.1

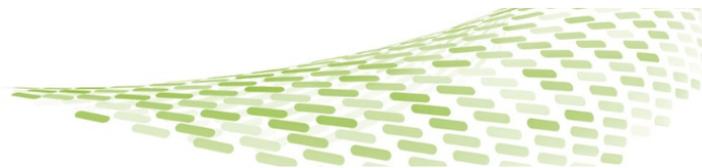
2. Further clarifications

Moreover, Eurex Clearing is incorporating the following clarifying amendments to the FCM Regulations and FCM Default Rules:

- Deletion of references to the German version of the Clearing Conditions as the legally binding version;
- Clarification that an FCM Clearing Member only acts as principal towards Eurex Clearing with respect to the clearing of own transactions; and
- Clarification that an FCM Clearing Member is not required to be the legal owner of cash margin and that it is sufficient that it is entitled to deliver cash to Eurex Clearing.

To reflect the changes, the following provisions of the FCM Regulations and FCM Default Rules will be amended as outlined in Attachment 1:

- FCM Regulations Chapter I Part 1 Numbers 1.2.1, 1.7.1, 1.7.2, 3.2.2, 9.5.5, 9.5.6, 11.1.2
- FCM Default Rules Numbers 2, 4.1.4, 4.3.2



The amendments above will become effective on 12 November 2018. As of the effective date, the full version of the amended FCM Regulations and FCM Default Rules will be available for download on the Eurex Clearing website www.eurexclearing.com under the following link:

Resources > Rules and Regulations > FCM Regulations

Pursuant to Chapter I Number 16.2.4 of the FCM Regulations and Chapter I Number 16.2.5 of the FCM Regulations in connection with Number 6.2.4 of the FCM Default Rules, each change and amendment of the FCM Regulations and the FCM Default Rules published by this circular to FCM Clearing Members affected by such change or amendment (Affected Customers) at least fifteen (15) Business Days prior to the effective date indicated herein, is deemed accepted by each Affected Customer, unless it objects by written notice to Eurex Clearing AG within such notification period. The right of Eurex Clearing AG to terminate the Clearing Agreement pursuant to Chapter I Part 1 Number 9.2.1 Paragraph (1)(d) of the FCM Regulations shall remain unaffected.

If you have any questions or need further information please contact Your Key Account Manager Clearing, via e-mail: clearing.services-admission@eurexclearing.com.

19 October 2018

Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

As of 12.11.2018

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THE FCM CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

Clearing Model Related Provisions

1 General Provisions

1.1 Scope of Application

[...]

1.2 Definitions and Interpretation

1.2.1 Unless the context requires otherwise, the following terms and expressions in the FCM Regulations shall have the following meanings:

[...]

“**Clearing Conditions**” means the clearing conditions of Eurex Clearing AG ~~(Clearing-Bedingungen der Eurex Clearing AG)~~ in their binding German language version, as amended from time to time, provided that references in these FCM Regulations to terms defined in the Clearing Conditions shall be references to the English language terms used in the non-binding English translation of the Clearing Conditions (with the meaning of the corresponding German language terms).

[...]

1.7 Representations and Undertakings with Respect to the FCM Clearing Agreement

1.7.1 Representations by the FCM Clearing Member

At the time it enters an FCM Clearing Agreement, each FCM Clearing Member represents and warrants to Eurex Clearing AG that:

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- (1) it has the power to enter into and perform the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party and has taken all necessary action to authorize such execution and performance;
- (2) its entry into and performance of the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party do not conflict with any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or agency of government applicable to it or any of its assets or any agreement or instrument by which it is bound or which affects any of its assets;
- (3) it is registered with the CFTC as a futures commission merchant and is a member of the NFA;
- (4) it has all other governmental consents or other consents that it is required to obtain with respect to its entry into and performance of the FCM Clearing Agreement and such consents are in full force and effect and all conditions of any such consents have been complied with;
- (5) no order has been made or applied for or resolution passed for the suspension of payments or dissolution, termination of existence, liquidation, winding-up, reorganization, bankruptcy, insolvency, judicial management or curatorship, in each case, with respect to it;
- (6) no moratorium in respect of all or any debts or a composition or an arrangement with creditors or any similar proceeding or arrangement by which its assets are submitted to the control of its creditors is ordered, declared or applied for, in each case, with respect to it;
- (7) no liquidator, trustee, administrator, receiver or similar officer has been appointed in respect of it or in respect of all or a substantial part of its assets;
- (8) it is able to pay its debts as and when they fall due, will not become unable to pay its debts as a consequence of entering into the FCM Clearing Agreement;
- (9) in case of Clearing of Own Transactions, it is acting as principal with respect to all of its Own Transactions;~~it is acting as principal in respect of the FCM Clearing Agreement and with respect to all of its Swap Transactions that are Own Transactions;~~
- (10) it is duly authorized under its agreement (or agreements) with each of its FCM Clients to Clear FCM Client Transactions on their behalf subject to and in accordance with the terms of the FCM Clearing Conditions; and
- (11) no event has occurred or circumstance arisen with respect to it which would (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute a Termination Event or Insolvency Termination Event under the FCM Clearing Conditions.

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1.7.2 Additional representations and undertakings by FCM Clearing Members

- (1) At the time it enters into the FCM Clearing Agreement, each FCM Clearing Member further represents and warrants to Eurex Clearing AG that:
- (a) it is entitled to pledge, or, as relevant, transfer full legal and beneficial ownership of, all assets (including, without limitation, all Eligible Margin Assets (including securities)) to be so pledged or so transferred by it pursuant to the FCM Clearing Agreement, free from any liens, encumbrances, charges or other rights or claims, and, without limiting the foregoing, it is either the legal and beneficial owner of such Eligible Margin Assets or, with respect to Eligible Margin Assets provided to Eurex Clearing AG in respect of FCM Client Transactions, it has the unconditional consent of the legal and beneficial owner to pledge or transfer the Eligible Margin Assets;
 - (b) it is not subject to a disqualification pursuant to Section 8a of the CEA;
 - (c) it has implemented risk management processes that sufficiently address operational capacity, including the ability to process expected volumes and/or values of transactions within required time frames, including at peak times, the ability to fulfil collateral, payment, and delivery obligations, and the ability to participate in default management;
 - (d) it maintains written risk management policies and procedures which address the risks that such FCM Clearing Member may pose to Eurex Clearing AG.
- (2) The FCM Clearing Member further undertakes:
- (a) to make the risk management policies and procedures described in Number 1.7.2 (1) (c) and (d) available to Eurex Clearing AG for inspection;
 - (b) to disclose to Eurex Clearing AG whether it has been audited by another derivatives clearing organization as well as the pertinent results of any such risk management audit; and
 - (c) to make information and documents regarding its risk management policies, procedures and practices available to the CFTC upon the CFTC's request.

[...]

1 Margin

[...]

3.2 Margin Calls and Delivery of Eligible Margin Assets

[...]

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3.2.2 Delivery of Eligible Margin Assets in the form of cash

- (1) The FCM Clearing Member shall be obliged to deliver Eligible Margin Assets in the form of cash by transferring ~~the relevant cash~~ to Eurex Clearing AG ~~all rights, title and interest in and to the relevant cash, as the case may be,~~ free and clear from any and all rights and claims of the FCM Clearing Member and of any third person, including, without limitation, pursuant to applicable regulation or under any statutory or other trust, but subject to the obligations of Eurex Clearing AG with respect to Cleared Swaps Customer Collateral (as defined in CFTC Regulation 22.1).
- (2) Eligible Margin Assets in the form of cash shall be provided in accordance with the cash clearing procedure pursuant to Number 1.4.1.
- (3) In order to ensure insolvency protection in relation to Eligible Margin Assets in the form of cash delivered to Eurex Clearing AG by the FCM Clearing Member in respect of the FCM Client Margin Account, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of trust accounts as set out in Clause 7 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a "**Trust Account**"). The FCM Clearing Member agrees to hold its rights in respect of any such Trust Account on trust for its FCM Clients from time to time.

[...]

9 Termination Rules with respect to the FCM Clearing Member

[...]

9.5 Consequences of a Termination

[...]

9.5.5 ~~Realization of Margin, release or return of Eligible Margin Assets~~

- (1) In case Eurex Clearing AG is, with respect to an FCM Clearing Member Netting Set or an FCM Client Netting Set, the creditor of the Difference Claim against the Affected FCM Clearing Member, Eurex Clearing AG shall, in the case of Eligible Margin Assets in the form of cash, use such cash (where applicable, in accordance with the provisions relating to Trust Accounts set out in the FCM Clearing Agreement) and, in the case of Eligible Margin Assets in the form of securities, be entitled to realize its security interest granted by the Affected FCM Clearing Member in accordance with the Pledge Agreement.
- (2) Eurex Clearing AG:
 - (a) shall apply Eligible Margin Assets in the form of cash, and shall enforce and realize its security interests over all Eligible Margin Assets in the form of securities booked into the FCM Clearing Member Proprietary Margin Account and apply the proceeds thereof, in the following order of priority:

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(aa) first, to the Difference Claim relating to the FCM Clearing Member Netting Set of the Affected FCM Clearing Member; and

(bb) second, (only to the extent that the FCM Client Margin is, for whatever reason, not sufficient for such purpose), in Eurex Clearing AG's discretion, to the Difference Claim relating to an FCM Client Netting Set of any FCM Client of the Affected FCM Clearing Member; and

(b) shall enforce and realize its security interests over all Eligible Margin Assets booked into the relevant FCM Client Margin Account and shall apply the proceeds to the Difference Claim relating to an FCM Client Netting Set of any FCM Client of the Affected FCM Clearing Member whose FCM Client Transaction Account has been allocated to such FCM Client Margin Account within the systems of Eurex Clearing AG.

9.5.6 Return of any balance owed by Eurex Clearing AG and return or release of Eligible Margin Assets in respect of the FCM Clearing Member Netting Set or any FCM Client Netting Set after the completion of the default management process

If an FCM Clearing Member Termination Time has occurred with respect to all FCM Clearing Member Own Transaction Accounts and an FCM Client Termination Time has occurred with respect to any FCM Client Transaction Accounts, Eurex Clearing AG shall return any balance owed by it in respect of any FCM Clearing Member Netting Set or relevant FCM Client Netting Set following the completion of the default management process with respect to the FCM Clearing Member as follows:

- (1) The Difference Claim in relation to the FCM Clearing Member Netting Set owed by Eurex Clearing AG shall be discharged by payment of the relevant amount to the Affected FCM Clearing Member.
- (2) The Difference Claim in relation to the relevant FCM Client Netting Set owed by Eurex Clearing AG shall be discharged by payment of the relevant amount to the Affected FCM Clearing Member and such payment shall constitute a return to the Affected FCM Clearing Member for the account of such FCM Client.
- (3) Any remaining pledges in respect of Eligible Margin Assets in the form of securities booked into the FCM Clearing Member Margin Account or the relevant FCM Client Margin Account shall expire or shall be released by Eurex Clearing AG.
- (4) Any remaining Eligible Margin Assets in the form of cash booked into the FCM Clearing Member Margin Account or the relevant FCM Client Margin Account shall be returned to the Affected FCM Clearing Member, in the latter case collectively for the benefit of its FCM Clients.

[...]

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11 Termination Rules with respect to Eurex Clearing AG

[...]

11.1.2 A separate Claim for Non-Performance shall be determined by Eurex Clearing AG for all FCM Clearing Member Own Transaction Accounts and each FCM Client Transaction Account by way of combining (*saldieren*) the CCP Single Transaction Amounts of all terminated Swap Transactions in such account or sub-account.

(1) The Claim for Non-Performance for all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account resulting from such combination shall, following its determination in accordance with Number 11.2.1 or Number 11.2.2 below, be automatically (i) set off with relevant Termination Unpaid Amounts and/or (ii) added to relevant Termination Unpaid Amounts in case they are payable by the debtor of the Claim for Non-Performance, as the case may be, in order to result in one single difference claim.

“Termination Unpaid Amounts” means (i) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid on the date of expiry of primary obligations under Number 11.1.1 above, and (ii) the value of any assets due to be delivered as a primary obligation under the relevant Transaction, but not delivered, on the date of expiry of primary obligations under Number 11.1 above. All such amounts or values shall be denominated in the Termination Currency.

(2) The Claim for Non-Performance and the difference claim shall be denominated in the Termination Currency.

(3) —If the Claim for Non-Performance is a positive figure for all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account, that amount shall be owed by Eurex Clearing AG to the FCM Clearing Member in respect of such account or sub-account (with the FCM Clearing Member acting as agent on behalf of its FCM Client in the case of an FCM Client Transaction Account).

~~;~~ If it is a negative figure for a particular Account, the provisions under 9.5.5 and 9.5.6 regarding the realization of Margin and the return of any balances owed by Eurex Clearing AG shall apply accordingly. In case a negative figure remains with respect to the relevant Account, such that amount shall be owed by the FCM Clearing Member to Eurex Clearing AG in respect of such account.

~~The Claim for Non-Performance and the difference claim shall be denominated in the Termination Currency.~~

(4) —Eurex Clearing AG shall notify the determined value of the difference claim with respect to all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account to the relevant FCM Clearing Member as soon as reasonably practicable after its determination, together with reasonable detail

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regarding the data and information forming the basis of the determination. The party with the payment obligation in respect of all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account shall pay the determined value of the difference claim to the other party as soon as reasonable practicable following the notification of the payable amount by Eurex Clearing AG. Such party shall not be obliged to pay any interest on the amount of the difference claim unless it is in default following the receipt of a payment reminder by the other party. Default interest shall be paid on the basis of the effective overnight interest rate applicable to the currency of the difference claim.

~~“Termination Unpaid Amounts” means (i) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid on the date of expiry of primary obligations under Number 11.1.1 above, and (ii) the value of any assets due to be delivered as a primary obligation under the relevant Transaction, but not delivered, on the date of expiry of primary obligations under Number 11.1 above. All such amounts or values shall be denominated in the Termination Currency.~~

[...]

Attachment 2 to Eurex Clearing circular 087/18

Chapter II: Special Provisions for Clearing of Interest Rate Derivative Transactions

FCM Regulations of Eurex Clearing AG

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THE FCM CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

Part 1 General Provisions

[...]

1.2 Conclusion of Transactions

[...]

1.2.1 Novation of Original Swap Transactions

- (1) The trade record of the relevant Original Swap Transaction has to be transmitted to Eurex Clearing AG via an Approved Trade Source System.
- (2) Whenever the trade record of an Original Swap Transaction, including, as the case may be, a Credit Limit Token, is transmitted to Eurex Clearing AG via an ATS (such record hereinafter referred to as a "**Trade Record**"), and
 - (a) if (i) a party to the Original Swap Transaction is an FCM Clearing Member holding the relevant FCM Clearing License; or
 - (ii) an FCM Client is a party to the Original Swap Transaction, the relevant FCM Clearing Member holding the relevant FCM Clearing License, which has been designated as the FCM Clearing Member for such FCM Client in the Trade Record, has accepted the Original Swap Transaction for Clearing, which acceptance (aa) may be granted in the form of a credit limit token signifying the FCM Clearing Member's pre-approved credit limit for the FCM Client that is

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included in the Trade Record submitted via the ATS (the “**Credit Limit Token**”), or (bb) may otherwise be granted in the systems of Eurex Clearing AG; and

- (b) Eurex Clearing AG accepts such Original Swap Transaction for Clearing by making a Swap Trade Novation Report available to the FCM Clearing Member electronically via its system,

a Swap Transaction will be concluded in accordance with Chapter I Number 1.3.3 Paragraph (1) and as further specified with respect to Interest Rate Derivative Transactions in Part 2.

If one side of the Original Swap Transaction will be cleared by a Non-FCM Clearing Member, Eurex Clearing AG will conclude the relevant Swap Transaction for such Non-FCM Clearing Member in accordance with the applicable provisions of the Clearing Conditions.

In case an FCM Clearing Member has to accept an Original Swap Transaction pursuant to Paragraph (2) (a) (ii) (bb) above, the FCM Clearing Member shall accept the Original Swap Transaction in the systems of Eurex Clearing AG no later than 10 minutes after the receipt of the Original Swap Transaction for acceptance (“**Acceptance Period**”). Eurex Clearing AG will inform the FCM Clearing Member about any breach of the Acceptance Period. If the FCM Clearing Member does not demonstrate to Eurex Clearing AG within a reasonable timeframe the reasons for the breach of the Acceptance Period to Eurex Clearing AG's satisfaction, Eurex Clearing AG will reject the Original Swap Transaction.

- (3) Any acceptance of the Original Swap Transaction by Eurex Clearing AG for inclusion in the Clearing and the related novation pursuant to Chapter I Number 1.3.3 Paragraph (1) will be subject to the novation criteria pursuant to Number 1.2.3 and will be based on the Trade Record, including, as the case may be, a Credit Limit Token, provided by the ATS on behalf of the parties to the Original Swap Transaction. Eurex Clearing AG relies on the accuracy of the data set out in the Trade Record, including, as the case may be, a Credit Limit Token, and is neither able nor obliged to verify whether the Trade Record received properly reflects the terms of the Original Swap Transaction entered into by the relevant parties.

[...]

FCM Default Rules of Eurex Clearing AG

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THE FCM DEFAULT RULES WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

2 Definitions

Unless the context requires otherwise, the following terms and expressions in the FCM Default Rules shall have the following meanings:

[...]

“**Clearing Conditions**” means the clearing conditions of Eurex Clearing AG (~~Clearing-Bedingungen der Eurex Clearing AG~~) in their binding German language version, as amended from time to time, which are incorporated by reference herein, ~~provided that references in these FCM Default Rules to terms defined in the Clearing Conditions shall be references to the English language terms used in the non-binding English translation of the Clearing Conditions (with the meaning of the corresponding German language terms)~~. The Clearing Conditions may be viewed and printed out via internet on the website www.eurexclearing.de and obtained from Eurex Clearing AG upon request.

[...]

4.1.4 Each DMC is governed by the rules set forth in the Default Management Committees Rules (as defined in the FCM Regulations) governed by the laws of the Federal Republic of Germany, as published by Eurex Clearing AG on its website www.eurexclearing.com (such rules, ~~in their binding German language version, as amended from time to time, the “DMC Rules”, provided that references in these FCM Default Rules to any content of the DMC Rules shall be references to the relevant English language terms or provisions set out in the non-binding English translation of the DMC Rules (with the meaning of the corresponding German language terms or provisions)~~). The DMC Rules may be obtained from Eurex Clearing AG upon request.

[...]

4.3.2 DM Auctions are governed by the rules set forth in the Default Management Auction Rules (as defined in the FCM Regulations) governed by German law, as published by Eurex Clearing AG on its website www.eurexclearing.com (such rules, ~~in their binding German language version,~~ as amended from time to time, the “**DM Auction Rules**”, ~~provided that references in these FCM Default Rules to any content of the DM Auction Rules shall be references to the relevant English language terms or provisions set out in the non-binding English translation of the DM Auction Rules (with the meaning of the corresponding German language terms or provisions).~~ The DM Auction Rules may be obtained from Eurex Clearing AG upon request.

[...]
